



04 JAN 2006

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In re Application of :
SCHUHBAUER, Hans :
U.S. Application No.: 10/088,875 :
PCT No.: PCT/EP00/09585 :
Int. Filing Date: 29 September 2000 :
Priority Date: 01 October 1999 :
Attorney Docket No.: HUBR-1206 (10202655) :
For: RETARD FORM CONTAINING :
 α - LIPOIC ACID (DERIVATIVES) :

**DECISION ON
PETITION UNDER
37 CFR 1.10(c)**

This decision is in response to the documents filed 11 July 2005 which are treated as a petition under 37 CFR 1.10(c). No fee is required.

BACKGROUND

Applicants submitted papers using Express Mail to enter the national stage of PCT/EP00/09585. These papers were stamped as received by the USPTO on 02 March 2002.

12 June 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903). The Form PCT/DO/EO/903 indicated that all 35 U.S.C. 371 requirements were satisfied on 02 March 2002. A filing receipt recording the filing date as 02 March 2002 was also mailed.

On 11 July 2005, applicants filed the subject petition which was accompanied by *inter alia*, a copy of the Customer Copy of Express Mail label No. EL829645035US.

DISCUSSION

Any correspondence received by the Patent and Trademark Office delivered by "Express Mail" will be considered filed in the office on the date of deposit with the USPS. 37 CFR 1.10(a). Moreover, 37 CFR 1.10(c) states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date

of deposit as shown by the "date - in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date - in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date - in," and of any other official notation by the USPS relied upon to show the date of deposit.

Applicants submitted a copy of the Customer Copy of Express Mail label No. EL829645035US which has a "Date In" listed as "03 20 02." The Express Mail label is also stamped by the USPS on "MAR 20 2002."

The Express Mail label number is listed on the third page of the transmittal letter under the "Certificate of Express Mail" with the date deposited recorded as "March 20, 2002." Moreover, the Information Disclosure Statement also is certified as deposited on "March 20, 2002."

In light of the evidence, it appears that the DO/EO/US erroneously listed the 35 U.S.C. 371(c) date as 02 March 2002.

CONCLUSION

The petition to correct the filing date of the national stage papers pursuant to 37 CFR 1.10(c) is **GRANTED**.

The Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) and filing receipt mailed 12 June 2002 are both hereby **VACATED**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing including issuing a corrected Form PCT/DO/EO/903 indicating a 35 U.S.C. 371(c) date of **20 March 2002** and a corrected filing receipt.

The application will then be forwarded to Tech Center 1600 for further processing.

A handwritten signature in black ink that reads "James Thomson". The signature is written in a cursive style with a large, stylized "J" and "T".

James Thomson
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